SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 451

AMES NOWELL,

Petitioner,

vs.

MARGUERITE LOVELETT NOWELL,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JOHN T. BONNER,
Attorney for Petitioner,
412 Fifth Street, N.W.,
Washington, D.C. 20001

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The brief in opposition to the petition herein makes contentions which are without basis in law and cites cases which are irrelevant. It ignores the applicable provisions of the Constitution of the United States and the decisions of this Court interpreting them. It fails to mention that Respondent voluntarily appeared by counsel and in person in the Texas action and vigorously contested all of the issues raised therein, including the issues of jurisdiction and alleged issues based on the ex parte Connecticut injunctive orders, that after the judgment of divorce was duly entered, Respondent appealed from the judgment, which was affirmed (408 S.W. 2d 550), and that, pursuant to the judgment, Petitioner paid to Respondent's attorneys fees of $6,000.00 for their services in contesting the issues (11a). Implicit in the brief is the assumption that Respondent, after so contesting the issues in the

Texas action without success, was and still is entitled to relitigate those same issues in Connecticut and, through court orders which disregard the sister state judgment, coerce Petitioner into paying the further sum of $6,000.00 for Respondent's expenses in relitigating the issues, a position refuted by many decisions of this Court.

I

The Order Dismissing Petitioner's Appeal Is a Final Order Subject to Review By This Court.

The order of the Supreme Court of Connecticut of May 10th, 1967, affirms two orders of the Superior Court, entered on June 22nd, 1966 and March 17th, 1967, which denied full faith and credit to the Texas judgment of divorce and from which Petitioner duly appealed (R 49, R 52-54, R 61-64, R 81). The first of such orders directed Petitioner to pay to Respondent $6,000.00 as a legal fee for defense of a purported judgment of legal separation granted in complete disregard of the sister state judgment of divorce (R 25-26, R 39-40, R 41-43, 45), and the second adjudged Petitioner in contempt for his failure to pay such sum (R 61-64, R 81).

In addition, the order of the Supreme Court of Connecticut permanently dismisses Petitioner's entire appeal from the purported separation judgment, which includes the appeals from said orders of the Superior Court and various other orders, unless Petitioner pays over to Respondent said sum of $6,000.00, which sum would be permanently lost and which the

recognition of the sister state judgment of divorce by the Connecticut courts would relieve Petitioner of any duty to pay.

Thus the order of dismissal is an adjudication of legal rights of Petitioner of importance to him. It is a final order which subjects Petitioner to substantial financial loss that would be irreparable. The subject or issue adjudicated by the order is a separate and distinct matter, anterior to the merits and not enmeshed in disputed facts, which involves the denial of rights under the Constitution and which can be separately reviewed. Accordingly the order is subject to the certiorari jurisdiction of this Court. *Clark* v. *Williard,* 292 U.S. 112, 117-119 (1934); *Cohen* v. *Beneficial Loan Corp.,* 337 U.S. 541, 546-547 (1949); *Construction Laborers* v. *Curry,* 371 U.S. 542, 549-550 (1963); *Rosenblatt* v. *American Cynamid Company,* 86 S. Ct. 1 (1965, Goldberg, J.). In the *Cohen* case this Court stated the applicable rule, as follows (P. 546):

> "This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. The Court has long given this provision of the statute this practical rather than a technical construction. *Bank of Columbia* v. *Sweeny,* 1 Pet. 567, 569; *United States* v. *River Rouge Co.,* 269 U.S. 411, 414; *Cobbledick* v. *United States,* 309 U.S. 323, 328."

In *Fleischmann Corp.* v. *Maier Brewing Co.*, 386 U.S. 714 (1967), this Court reviewed on certiorari an allowance of counsel fees although other issues remained for adjudication below. In *Williams* v. *Morgan*, 111 U.S. 684, 699 (1884), the Court held that an order fixing compensation of trustees was final as to that matter and reviewable.

Obviously the circumstance that the Supreme Court of Connecticut has deferred the effective date of the order of dismissal to October 3rd, 1967, in no way detracts from the finality of the order as an adjudication of Petitioner's rights or its reviewability by this Court and Respondent's assertion to the contrary (p. 4) is difficult to understand.

A review of the order of dismissal by this Court and a determination that the Texas judgment of divorce is entitled to full faith and credit, which the undisputed facts and law clearly justify, would correct glaring violations of basic constitutional rights, bring to an end this separation proceeding and its waste of the time of court personnel and litigants,* and relieve this Court of the necessity of reviewing this case at a later time.

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* Such determination would also terminate two other cases, commenced by Respondent in the Superior Court of Fairfield County after entry of the Texas judgment of divorce, in complete disregard of the judgment. *Nowell* v. *National Shawmut Bank*, et als., No. 126887, and *Nowell* v. *Nowell*, et als., No. 129678.

II

The Order of Dismissal and the Orders Affirmed Thereby Give Rise to Federal Questions.

The orders of the Connecticut courts requiring Petitioner to pay to Respondent the substantial sum of $6,000.00 for the relitigation of issues previously adjudicated by the sister state judgment constitute a clear denial of full faith and credit contrary to Article IV, Section 1, of the Constitution, a denial of due process of law contrary to the Fourteenth Amendment, and a denial of equal protection of the laws contrary to Article IV, Section 2, of the Constitution and the Fourteenth Amendment.

Furthermore, since the Texas judgment of divorce dissolved the marriage of the parties on December 22nd, 1965, the courts of Connecticut thereafter had no jurisdiction or power to compel Petitioner to pay counsel fees to Respondent. No marital relationship or status existed on which to base such compulsion. See, e.g., *Cherry* v. *Cherry,* 208 Ga. 726, 69 S.E. 2d 252 (1952); *Stewart* v. *Stewart,* 115 Fla. 158, 155 So. 114 (1934); *Johnson* v. *Johnson,* 202 Md. 547, 97 A 2d 330, 98 A. 2d 276 (1953), cert. den. 346 U.S. 874 (1953).

Neither *Krasnow* v. *Krasnow,* 140 Conn. 254, nor *State* v. *Ward,* 134 Conn. 81, cited by Respondent at pages 5 and 6, involved a sister state judgment of any kind or any constitutional issue relating thereto and both cases are clearly distinguishable. In the former

a divided court merely allowed a fee for litigation of the custody of children, and in the latter a divided court merely held that certain appellants had failed to prosecute their appeals diligently.

Contrary to the repeated assertion of Respondent (pp. 2, 6), the law of Connecticut entitled Petitioner to appeal from the purported judgment of separation and orders of the Superior Court made against him. Conn. Practice Book, 1963, Sec. 600. Petitioner duly exercised that right, and he may not be deprived of the same through discrimination or contrary to due process of law or by the assertion of an alleged condition precedent which violates an appellant's rights under the Constitution. Even if Connecticut made no provision for appeals, that circumstance would not relieve its courts of their duty to accord full faith and credit to sister state judgments and to respect other rights guaranteed by the Constitution. The case of *Bennett* v. *United Lumber & Supply Co.*, 110 Conn. 536, cited by Respondent (p. 2), involved an improper allowance of a new trial following a jury verdict and is entirely irrelevant.

III

The Texas Judgment of Divorce Has Been, and Is, Entitled to Full Faith and Credit.

The judgment was affirmed by the Court of Civil Appeals of Texas on October 28th, 1966, and this Respondent's motion for a rehearing of the appeal was overruled on November 18th, 1966. Respondent's application to the Supreme Court of Texas for a writ of

error to review the decision of affirmance was dismissed on February 1st, 1967, and a motion for a rehearing thereof was denied on March 1st, 1967.

Thus, every available appeal from the judgment, including dilatory motions for rehearing, was taken and determined against Respondent, and the judgment clearly became final several months prior to entry of the Connecticut order of dismissal on May 10th, 1967.

Moreover, Article IV, Section 1, of the Constitution states broadly that full faith and credit shall be given to "records and judicial proceedings" of sister states. The provision is not limited to "final" judgments but protects all judgments of sister state courts of competent jurisdiction which have not been vacated or reversed. *Huron Holding Corp.* v. *Lincoln Mine Operating Co.*, 312 U.S. 183, 188-189 (1941); *Ferster* v. *Ferster*, 220 Ga. 319, 138 S.E. 2d 674 (1964); *Weiss* v. *Metalsalts Corp.*, 72 N.J. Super. 264, 178 A. 2d 240 (1962).

For more than a century the rule in Connecticut has been that a sister state judgment is entitled to full faith and credit during the pendency of an appeal therefrom unless the appeal vacates the judgment. *Bank of North America* v. *Wheeler*, 28 Conn. 433, 73 Am. Dec. 683 (1859). See, also, *Salem Park, Inc.* v. *Salem*, 149 Conn. 141, 144, 176 A. 2d 571, 573 (1961).

Obviously the ex parte Connecticut injunctive orders did not relieve the courts there of the duty to accord full faith and credit to the Texas judgment of divorce. See, e.g., *James* v. *Grand Trunk & Western Ry. Co.*, 14 Ill. 2d 356, 152 N.E. 2d 858 (1958), cert.

den. 358 U.S. 915 (1958); *Dominick* v. *Dominick,* 26 New York Misc. 2d 344, 205 N.Y.S. 2d 503 (1960); *Austin* v. *Austin,* 25 New York App. Div. 2d 710, 268 N.Y.S. 2d 586 (1966); *Commonwealth* v. *Messing,* 195 Pa. Super. 334, 171 A. 2d 893 (1961); Restatement, *Conflict of Laws,* Sec. 450, p. 534.

The case of *Wehrhane* v. *Peyton,* 134 Conn. 486, cited by Respondent at pp. 7, 8, did not involve a sister state judgment of any kind or any issue of full faith and credit and is entirely irrelevant.

The report and amended report of the Connecticut referee appended to Respondent's brief were only recommendations to a court. They were not judgments. Moreover, they were made in an action for a separation, which differed fundamentally from the Texas action for an absolute divorce.

CONCLUSION

For the reasons stated above and in the petition herein, a writ of certiorari should be granted herein.

Respectfully submitted,

JOHN T. BONNER,
Attorney for Petitioner,
412 Fifth Street, N.W.,
Washington, D. C.